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C O N F I D E N T I A L SECTION 01 OF 02 ZAGREB 000194

SIPDIS

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TAGS: PREL KAWC ICTY HR

SUBJECT: UPDATE: COOPERATION WITH ICTY, MISSING GOTOVINA DOCUMENTS

REF: ZAGREB 137 AND PREVIOUS

Classified By: Political Officer Chris Zimmer for reasons 1.4 (b) and (d)

¶1. (C) SUMMARY: Croatian officials and ICTY Prosecutor Brammertz continue to disagree on whether Croatia is doing everything it can to comply with Brammertz' request for additional documents in the Gotovina trial at The Hague. Although they agreed on a list of 23 key documents that should have existed, Brammertz and the Government of Croatia continue to disagree on whether any of Croatia's submissions are, in fact, the key documents. The Croats are coming to the end of their search for documents, growing increasingly frustrated with the prosecutor, and are not sure whether Brammertz will ever be satisfied. Embassy officials stressed the need to continue cooperation with ICTY and received assurances that Croatia's search for documents will continue even after a report on the final status of the 23 key documents is released in the coming weeks. END SUMMARY.

¶2. (C) Ambassador Bradtke called on State Secretary Markotic, in charge of cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), at the Ministry of Justice on March 31. Markotic detailed the current status of the investigation and cooperation with ICTY Chief Prosecutor Serge Brammertz on missing documents for the ICTY trial of former Croatian General Ante Gotovina (Reftel). Markotic said he was aware of Brammertz' continuing dissatisfaction with Croatia's cooperation, but that Brammertz has not communicated his views directly to the Croats, and instead aired his grievances with the EU presidency in Prague and also sent messages to the Croats through British diplomatic channels. He went on to express frustration with the OTP and provided the Croatian case for why they have been unable to resolve the documents issue.

TWENTY-THREE KEY DOCUMENTS

¶3. (C) Markotic noted that Croatia has, to date, delivered thousands of documents, although most did not satisfy the Office of the Prosecutor's (OTP) request. As a result of continuing disagreements, Croatia initiated a February meeting of Croatian and OTP military experts to develop of a list of key documents. The agreement on the points of understanding signed in February between the OTP and the Government of Croatia (GOC) distilled the remaining document requests down to 23 specific documents. The GOC continues to assert the chain of command model used by the OTP to develop its original list of requested documents is flawed, but both Croatian military experts and the OTP agreed that these 23 documents are crucial to satisfying the OTP's request. The 23 documents include maps, orders, and other papers that

should have existed for Operation Storm to take place in 1995.

TITLES AND FORMATTING NOT EXACT DURING WARTIME

¶4. (C) The GOC started a search of archives for the 23 documents both in Croatia and Bosnia and has already delivered three or four documents to the OTP. According to Markotic, Brammertz said that one of the recently delivered documents was delivered one and a half years ago and the others were not relevant. The reason, Markotic cited, for why Brammertz is not accepting the new submissions is because the titles on the delivered documents do not exactly match the titles on the list of 23. The GOC has witness testimony claiming that although the titles are not exact, these are the documents used for Operation Storm, including an order for an attack at Sibenik and a list of targets in the Zadar region. He noted that many of the key documents the GOC provided were developed in the field and written by hand, and therefore lack the title "Operation Storm." He said Croatian military experts do not believe the documents existed in the organized, properly titled form the OTP may want, so there still appears to be no consensus on which documents actually represent key documents despite the agreed-upon list.

EU HAS SIMILAR PROBLEM WITH MISSING DOCUMENTS

¶5. (C) Markotic said that within two weeks, the GOC will establish the chain of custody for all 23 documents. He said that six documents relate to Bosnian-Croat forces and

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Croatian authorities received permission to search archives in Bosnia. They found 38 additional documents related to the Gotovina case, but none are from the list of 23 key documents. Some witnesses during the course of the investigation confirmed they saw some of the key documents in the possession of one of Gotovina's lawyers, Marin Ivanovic, and Croatian prosecutors have added those to Ivanovic's criminal indictment. Markotic added that the GOC had now checked Croatian archives four times. It is embarrassing that the GOC is unable to find documents that should be in its own archives, Markotic added. He noted, however, that the European Union has its own problem with missing documents as they are unable to comply with an ICTY subpoena for reports by EC monitors during Operation Storm.

COOPERATION SHOULD BE CLOSING BENCHMARK

¶6. (C) The Trial Chamber still has not ruled on the OTP's motion to subpoena the documents from Croatia. The court is overburdened with documents, Markotic said, and likely waiting to see if the GOC and OTP reach an agreement. As for the EU's insistence on linking this issue to Croatia's accession talks, Markotic noted that the OTP can add documents at any time, even after a verdict, so cooperation with ICTY can be a closing rather than opening benchmark in accession negotiations. While EU negotiations are continuing, the Gotovina trial can continue or even conclude while the GOC and OTP attempt to settle the documents issue.

GROWING FRUSTRATION

¶7. (C) The Croats are growing very frustrated with the OTP and believe that the more they do, the less it satisfies Brammertz, according to Markotic. He said that many senior officials are also quietly expressing outrage because they hear Brammertz is trying to equate Serbia's cooperation with apprehending Mladic to Croatia's cooperation on finding the missing documents. They are very concerned that he may say Serbia has better cooperation or declare Serbia in full

compliance with ICTY despite the failure to capture Ratko Mladic. (NOTE: Previous ICTY prosecutor Carla Del Ponte did not declare Croatia in full compliance until Gotovina's capture. END NOTE.) Markotic added that the missing document issue is a good excuse for Brammertz should the case against Gotovina fail; therefore, Brammertz will seek to keep it open as long as possible.

¶8. (C) The Ambassador noted to Markotic that he had received assurances from the Prime Minister, Deputy Prime Minister Kosor, and Minister of Justice Simonovic that everything was being done to find the missing documents. If the documents could not be found, it would be important to convince the international community that all possible steps had been taken to locate them or account for what happened to them.

BRADTKE